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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/822,734	04/13/2004	Mikael Lindgren	69993-254124	4621
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VENABLE LLP				
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EXAMINER				
GREGORY, BERNARR E				
ART UNIT		PAPER NUMBER		
3662				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/822,734

Applicant(s)

LINDGREN, MIKAEL

Examiner

Bernarr E. Gregory

Art Unit

3662

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 May 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19, 22 and 23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 5, 22 and 23 is/are rejected.
- 7) ☒ Claim(s) 3, 4 and 6-19 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 22-23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Independent claim 22 is indefinite and unclear in that it is presented in its preamble as being directed to a "target-seeking system" (line 1), but there is no recitation of any structure that performs this function of target seeking. Thus, it is unclear how the claim 22 apparatus is a "target-seeking system" when it does not seek targets.

Dependent claim 23 is indefinite and unclear in that it is drafted to be dependent from independent claim 22, but it does not state that the claimed subject matter of claim 22 further comprises what is in claim 23; rather, claim 23 states that the overall "target-seeking system" is "a target-seeking missile." This phrasing totally reads claim 22 out of its dependent claim 23. A dependent claim must further limit the claim from which it depends, but claim 23 as written does not further limit claim 22. Please see 37 CFR 1.75(c), noting especially the first sentence.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1, 2, and 22 are rejected under 35 U.S.C. 102(e) as being anticipated by Kondo et al ('234).

With respect to independent claim 1, the claimed "first sensor unit" (line 1) reads on the CCD array **3** in Figure 3 of Kondo et al ('234). The claim 1 "first optical unit" (line 1) reads on the Digital Micromirror Device (DMD) shutter **2** in Figure 3 of Kondo et al ('234). Since the DMD shutter **2** acts as a shutter for the Kondo et al ('234) imaging device, when the DMD is in one state, as claimed in claim 1, the light reaches the CCD sensor **3**, but when the DMD shutter **2** is in another state, the light does not reach the CCD sensor **3**, as claimed in claim 1. Since each element of claim 1 is found in Kondo et al ('234), claim 1 is anticipated by Kondo et al ('234).

With respect to dependent claim 2, the further limitations of the claim are met by the plurality of CCD sensor elements in the CCD sensor array **3** in Figure 3 of Kondo et al ('234).

With respect to independent claim 22, the remarks are substantially those given above with respect to independent claim 1. It is noted that the reference of the overall apparatus in claim 22 as a "target-seeking system" is merely a statement of intended use. It is noted further that claim 22 recites no structure

with which targets could be sought, so that the applied reference Kondo et al ('234) is as much of a "target-seeking system" as the apparatus set forth in claim 22.

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kondo et al ('234).

One of ordinary skill-in-the-art would be a person having a graduate-level degree in some sort of Engineering or in Physics with several years of practical experience in the design and/or testing of target-seeking optical systems.

Although Kondo et al ('234) does not mention the use of the disclosed invention in the "infra-red wavelength range" (claim 5, line 2), Kondo et al ('234) discloses generally a camera that makes images from received light of whatever wavelength. Thus, it would have been obvious to one of ordinary skill-in-the-art that the imaging device in Kondo et al ('234) could be used with any of the wavelength ranges of light in which it is known in the art to make images, including the old and well-known infrared wavelengths.

7. Claims 2-4 and 6-19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

8. Claim 23 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

McDonald et al ('521) is of interest for showing an optical switch that is suggestive of Applicant's invention, at least as set forth in independent claims 1 and 22.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bernarr E. Gregory whose telephone number is (571) 272-6972. The examiner can normally be reached on weekdays from 7:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas H. Tarcza, can be reached on (571) 272-6979. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Bernarr E. Gregory/
Primary Examiner, Art Unit 3662